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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/671,898	09/25/2003	David R. Shelton	SHELTO-44042	8030
26252	7590	05/17/2007	EXAMINER	
KELLY LOWRY & KELLEY, LLP			CANFIELD, ROBERT	
6320 CANOGA AVENUE			ART UNIT	PAPER NUMBER
SUITE 1650			3635	
WOODLAND HILLS, CA 91367				
MAIL DATE		DELIVERY MODE		
05/17/2007		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/671,898	SHELTON, DAVID R.	
	Examiner	Art Unit	
	Robert J. Canfield	3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 02 May 2007.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 2-4,7,9,10,13,16,17,20 and 21 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,5,6,8,11,12,14,15,18,19 and 22 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 14 November 2006 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
 Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____
- 5) Notice of Informal Patent Application
- 6) Other: _____

Art Unit: 3635

1. This Office action is in response to the RCE filed 05/02/07. Claims 1-22 are pending with claims 2-4, 7, 9, 10, 13, 16, 17, 20 and 21 withdrawn from consideration for being directed to a non-elected invention.

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1, 5, 6, 8, 11, 12, 14, 15, 18, 19 and 22 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

There is no description of the shim extending the width of the wooden member support to prevent longitudinal movement of the shim relative to the wooden member. While Figures 12-15 appear top show a shim having a width approximately the width of the support member base they do not clearly support the prevention of longitudinal movement of the shim relative to the wooden member. The directions of widths and longitudinal are not clearly described. Further, if the shim extended the full width of the support member base it would not be capable of maintaining contact with the wood member as it shrunk.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1, 5, 6, 8, 11, 12, 14, 15, 18, 19 and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear what movement is prevented by having the width of the shim extend the width of the support member. It is unclear how the shim could move at all if the shim were the width of the support member base. It is unclear what the longitudinal direction of longitudinal movement is. It is unclear what is considered the width of the wooden member support.

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 1, 5, 6, 8, 11, 12, 14, 15, 18, 19 and 22 as best understood are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 1,045,984 to King.

King provides a wooden support member 7 having a wooden member timber/8 supported thereon. A shim device is disposed in a space between the wooden member and support member and automatically expands to fill the space between the support 7 and timber 8 due to movement from any reason and thus maintain contact with the timber and support surface. This inherently translates the weight of the timber 8 to the support member 7. Contact is automatically

maintained by a spring 18 that is inherently a flexible and compressible material. The space between the timber 8 and support 7 inherently must be measured before inserting of the device to insure the device fits properly. As best understood the shim is shown in Figure 1 as extending the width of the support member 7.

8. Applicant's arguments filed 05/02/07 have been fully considered but they are not persuasive.

Applicant argues that by amending the claims to include the language that the shim extends the width of the wooden member support to prevent longitudinal movement of the shim relative to the wooden member that the claims overcome US Patent 1,045,984 to King. This is not found persuasive. The language added by amended is unclear and indefinite as noted above. It does not appear to find adequate support in the original disclosure. As best understood King still meets the claims as figure 1 shows the shim device extending the width of the support member 7.

It is noted that as amended independent claims 1 and 8 no longer appear generic to all of the non-elected/withdrawn species/claims.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert J. Canfield whose telephone number is 571-272-6840. The examiner can normally be reached on M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rich Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Robert J Canfield
Primary Examiner
Art Unit 3635

05/11/07

